

CA Inter – Corporate and Other Laws

Amendments for May 2023

Chapter 1: Preliminary

1.3 - Definitions (Sec. 2)

Small company	Sec. 2(85)	<p>Small company means a company, other than a public company:</p> <p>(i) paid-up share capital of which does not exceed ₹ 50 lakhs or such higher amount as may be prescribed which shall not be more than ₹ 10 crore; and</p> <p>(ii) turnover of which as per its last profit and loss account for the immediately preceding financial year does not exceed ₹ 2 crore or such higher amount as may be prescribed which shall not be more than ₹ 100 crore:</p> <p>Provided that nothing in this clause shall apply to:</p> <p>(A) a holding company or a subsidiary company;</p> <p>(B) a company registered under section 8; or</p> <p>(C) a company or body corporate governed by any special Act.</p>
		<p>Point to remember</p> <p>As per Rule 2(1)(t) of the Companies (Specification of Definitions Details) Rules, 2014, the paid-up capital and turnover of the small company shall not exceed ₹ 4 crores and ₹ 40 crores respectively.</p>

Chapter 2: Incorporation of Company

2.9 - Rectification of Name of Company (Sec. 16)

<p>Directions by CG</p> <p>- Sec. 16(1)</p>	<p>If through inadvertence or otherwise, a company is registered on its first registration or otherwise, by a name which:</p> <p>(a) in the opinion of the Central Government, is identical with or too nearly resembles the name by which a company in existence had been previously registered, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of 3 months from the issue of such direction, after adopting an ordinary resolution for the purpose;</p> <p>(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within 3 years of incorporation or registration or change of name of the company, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of 3 months from the issue of such direction, after adopting an ordinary resolution for the purpose.</p>
<p>Notice of change to the registrar</p> <p>- Sec. 16(2)</p>	<p>Where a company changes its name or obtains a new name, it shall within a period of 15 days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.</p>

Consequences of Default - Sec. 16(3)

If a company is in default in complying with any direction given under this section, the C.G. shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter:

Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13.

Chapter 3: Prospectus and Allotment of Securities

3.17 - Offer of invitation for subscription of securities on Private Placement (Sec. 42)

<p>Other requirements to be complied with as per Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014</p>	<p>Previous approval of shareholder</p>	<ul style="list-style-type: none"> For the purpose of Sec. 42, a company shall not make an offer or invitation to subscribe to securities through private placement unless the proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or invitations. In the explanatory statement annexed to the notice for the general meeting, the following disclosure shall be made: <ol style="list-style-type: none"> (a) Particulars of the offer including date of passing of board resolution. (b) Kinds of securities offered and the price at which security is being offered. (c) Basis or justification for the price (including premium, if any) at which the offer or invitation is being made. (d) Name and address of valuer who performed valuation. (e) Amount which the company intends to raise by way of such securities. (f) Material terms of raising such securities, proposed time schedule, purposes or object of offer, contributing being made by the promoters or directors either as part of the offer or separately in furtherance of objects.
		<p style="text-align: center;">Point to remember</p> <ul style="list-style-type: none"> In case of offer or invitation of any securities to QIBs, it shall be sufficient if the company passes a previous special resolution only in a year for all the allotments to such buyers during the year. No offer or invitation of any securities under this rule shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India, unless such body corporate or the national, as the case may be, have obtained G.G. approval under the FEM (Non-debt Instruments) Rules, 2019 and attached the same with the private placement offer cum application letter.

Chapter 5: Acceptance of Deposits by Companies

5.3 - Prohibition on acceptance of deposits from public (Sec. 73)

<p>Filing of Return of Deposits with the Registrar - Rule 16</p>	<ul style="list-style-type: none"> A duly audited return of deposits in DPT-3 (containing particulars as on 31st March of every year) shall be filed with the Registrar of Companies along with requisite fee on or before the 30th June of that year and declaration to that effect shall be submitted by the auditor in Form DPT-3. It is clarified by way of Explanation that DPT-3 shall be used to include particulars of deposits or particulars of transactions not considered as deposits or both by every company (other than a Government company).
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Chapter 6: Registration of Charges

6.3 – Duty to register charges etc. (Sec. 77)

Duty of the company to register charges – Sec. 77(1)

- It shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge, with the registrar within 30 days of creation of charge, in the prescribed manner.
- The Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation, on payment of such additional fees as may be prescribed.
- If the Charge is not registered within the extended period as above, the company shall make an application and Registrar is empowered to allow such registration to be made within a further period of 60 days after payment of prescribed *ad valorem* fees.
- The application for delay shall be made and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company.

Rule 3 of Companies (Registration of Charges) Rules, 2014

- The particulars of the charge together with a copy of the instrument, if any, creating or modifying the charge in **Form No. CHG-1** (for other than Debentures) or **Form No. CHG-9** (for debentures), as the case may be, duly signed by the company and the charge holder shall be filed with the Registrar within a period of 30 days of the date of creation or modification of charge along with the fee.
- **Verification of Instrument of Charges:**
A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar shall be verified as follows:
 - (a) **Where the instrument or deed relates solely to the property situated outside India,** the copy shall be verified by a certificate issued either:
 - under the seal, if any, of the company, or
 - under the hand of any director or company secretary of the company or an authorised officer of the charge holder, or
 - under the hand of some person other than the company who is interested in the mortgage or charge;
 - (b) **Where the instrument or deed relates, whether wholly or partly, to the property situated in India,** the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

Note: Nothing contained in Rule 3 shall apply to any charge required to be created or modified by a banking company u/s 77 in favour of the RBI when any loan or advance has been made to it under sub-clause (d) of clause (4) of Sec. 17 of the RBI Act, 1934.

6.13 - Signing of charge e-forms by insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation (Rule 13)

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| Signing of Forms | The Form No.CHG-1, CHG-4, CHG-8 and CHG-9 shall be signed by Insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar." |
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Chapter 7: Management and Administration

7.7 - Place of keeping and inspection of Registers, Returns, etc. (Sec. 94)

Place of keeping - Sec. 94(1)	<ul style="list-style-type: none"> The registers required to be kept and maintained by a company u/s 88 and copies of the annual return filed u/s 92 shall be kept at the registered office of the company. Such registers or copies of return may also be kept at any other place in India in which more than 1/10th of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company. The period for which the registers, returns and records are required to be kept shall be such as may be prescribed.
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Inspection of Registers - Sec. 94(2)	<p>The registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.</p>
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Rule 14(1) of the Companies (Management and Administration) Rules, 2014

- The registers and indices maintained pursuant to Sec. 88 and copies of returns prepared pursuant to Sec. 92, shall be open for inspection during business hours, at such reasonable time on every working day as the board may decide, by any member, debenture holder, other security holder or beneficial owner without payment of fee and by any other person on payment of such fee as may be specified in the articles of association of the company but not exceeding ₹ 50 for each inspection.
- For this purpose, reasonable time of not less than 2 hours on every working day shall be considered by the company.

Providing Extracts to Members etc. - Sec. 94(3)	<p>Any member, debenture holder, other security holder or beneficial owner or any other person may:</p> <ol style="list-style-type: none"> take extracts from any register, or index or return without payment of any fee; or require a copy of any such register or entries therein or return on payment of such fees as may be prescribed.
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Rule 14(2) of the Companies (Management and Administration) Rules, 2014

- Any member, debenture holder, security holder or beneficial owner or any other person may require a copy of register or entries therein or return on payment of such fee as may be specified in the articles of association of the company but not exceeding ₹ 10 for each page.
- Such copy or entries or return shall be supplied within 7 days of deposit of such fee.

Rule 14(3) of the Companies (Management and Administration) Rules, 2014

Notwithstanding anything contained in sub-rules (1) and (2), the following particulars of the register or index or return in respect of the members of a company shall not be made available for any inspection u/s 94(2) or for taking extracts or copies u/s 94(3), namely:

- address or registered address (in case of a body corporate);
- e-mail ID;
- Unique Identification Number;
- PAN Number.

Chapter 8: Declaration and Payment of Dividend

8.5 - Investor Education and Protection Fund (Sec. 125)

Amount to be transferred to Fund – Sec. 125(2)

- (a) Amount given by the C.G. by way of grants after due appropriation made by Parliament by law in this behalf;
- (b) Donations given to the Fund by the C.G., State Governments, companies or any other institution;
- (c) Amount in the Unpaid Dividend Account of companies;
- (d) Amount in the general revenue account of the C.G. which had been transferred to that account u/s 205A(5) of the Companies Act, 1956, as it stood immediately before the commencement of the Companies (Amendment) Act, 1999, and remaining unpaid or unclaimed on the commencement of this Act;
- (e) the amount lying in the Investor Education and Protection Fund u/s 205C of the Companies Act, 1956;
- (f) the interest or other income received out of investments made from the Fund;
- (g) the amount received under sub-section (4) of section 38;
- (h) the application money received by companies for allotment of any securities and due for refund;
- (i) matured deposits with companies other than banking companies;
- (j) matured debentures with companies;
- (k) interest accrued on the amounts referred to in clauses (h) to (j);
- (l) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;
- (m) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
- (n) such other amount as may be prescribed:

Provided that no such amount referred to in clauses (h) to (j) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment.

Fund – Rule 3 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016

There shall be credited to the Fund, the following amounts, namely:

- (a) all amounts payable as mentioned in clauses (a) to (n) of Sec. 125(2) of the Act;
- (b) all shares in accordance with Sec. 124(6) of the Act;
- (c) all the resultant benefits arising out of shares held by the Authority under clause (b);
- (d) all grants, fees and charges received by the Authority under these rules;
- (e) all sums received by the Authority from such other sources as may be decided upon by the Central Government;
- (f) all income earned by the Authority in any year;
- (fa) all shares held by the Authority in accordance with proviso to Sec. 90(9) of the Act and the resultant benefits arising out of such shares, without any restrictions;**
- (g) all amounts payable as mentioned in Sec. 10B(3) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, Sec. 10B of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, Sec. 38A(3) of the State Bank of India Act, 1955, and Sec. 40A of the State Bank of India (Subsidiary Bank) Act, 1959; and
- (h) all other sums of money collected by the Authority as envisaged in the Act.

Chapter 9: Accounts of Companies

9.2 - Books of Account, etc., to be kept by Company (Sec. 128)

Electronic Form of Books of A/c – Proviso to Sec. 128(1)

- The company may keep such books of account or other relevant papers in electronic mode in prescribed manner.

Rule 3 of Companies (Accounts) Rules, 2014 - Electronic Form of Books of Account

Rule 3 of the Companies (Accounts) Rules, 2014 provides the manner in which books of account can be maintained in electronic mode. Accordingly,

- (1) The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India, **at all times** so as to be usable for subsequent reference:

Provided that for the financial year commencing on or after the **1st day of April, 2023**, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

- (2) The books of account and other relevant books and papers maintained in electronic mode shall be retained completely in the format in which they were originally generated, sent or received, or in a format which shall present accurately the information generated, sent or received and the information contained in the electronic records shall remain complete and unaltered.
- (3) The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches.
- (4) The information in the electronic record of the document shall be capable of being displayed in a legible form.
- (5) There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.
- (6) The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a ~~periodic~~ **daily** basis.
- (7) The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement-
- (a) the name of the service provider;
 - (b) the internet protocol address of service provider;
 - (c) the location of the service provider (wherever applicable);
 - (d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider;
 - (e) where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India,**

9.10 - Corporate Social Responsibility (Sec. 135)

Requirement of CSR Committee – Sec. 135(1) and Sec. 135(9)

Sec. 135(1)

Every company having

- net worth of ₹ 500 crore or more, or
- turnover of ₹ 1,000 crore or more or
- net profit of ₹ 5 crore or more

during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

	Sec. 135(9)	Where the amount to be spent by a company u/s (5) does not exceed ₹ 50 lakh, the requirement u/s 135(1) for constitution of the CSR Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.
Corporate Social Responsibility – Rule 3 of The Companies (CSR Policy) Rules, 2014		
<p>(1) Every company including its holding or subsidiary, and a foreign company defined u/s 2(42) having its branch office or project office in India, which fulfils the criteria specified in Sec. 135(1) shall comply with the provisions of Sec. 135 of the Act and these rules: Provided that net worth, turnover or net profit of a foreign company shall be computed in accordance with balance sheet and Profit and loss account of such company prepared in accordance, with the provisions of Sec. 381(1)(a) and Sec. 198 of the Act: Provided further that a company having any amount in its Unspent CSR Account as per Sec. 135(6) shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section.</p> <p>(2) Every company which ceases to be a company covered u/s 135(1) for 3 consecutive financial years shall not be required to: (a) constitute a CSR Committee; and (b) comply with the provisions contained in Sec. 135, till such time it meets the criteria specified in Sec. section 135(1).</p>		
CSR Implementation - Rule 4 of Companies (CSR) Rules, 2014	<p>(1) The Board shall ensure that the CSR activities are undertaken by the company itself or through:</p> <p>(a) a company established u/s 8 of the Act, or a registered public trust or a registered society, exempted u/s 10(23) or registered u/s 12A and approved u/s 80G of the Income-tax Act, 1961, established by the company, either singly or along with any other company, or</p> <p>(b) a company established u/s 8 of the Act or a registered trust or a registered society, established by the C.G. or S.G.; or</p> <p>(c) any entity established under an Act of Parliament or a State legislature; or</p> <p>(d) a company established u/s 8 of the Act, or a registered public trust or a registered society, exempted u/s 10(23) or registered u/s 12A and approved u/s 80G of the Income-tax Act, 1961, and having an established track record of at least 3 years in undertaking similar activities.</p> <p>(2) (a) Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the C.G. by filing the form CSR-1 electronically with the Registrar, with effect from the 1st day of April, 2021: Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the 1st day of April, 2021.</p> <p>(b) Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a CA in practice or a CS in practice or a Cost Accountant in practice.</p> <p>(c) On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.</p> <p>(3) A company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.</p> <p>(4) A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.</p> <p>(5) The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the</p>	

	<p>person responsible for financial management shall certify to the effect.</p> <p>(6) In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.</p>
CSR Reporting - Rule 8 of Companies (CSR) Rules, 2014	<p>(1) The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.</p> <p>(2) In case of a foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.</p> <p>(3) (a) Every company having average CSR obligation of ₹ 10 crore or more in pursuance of Sec. 135(5) of the Act, in the 3 immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of ₹ 1 crore or more, and which have been completed not less than one year before undertaking the impact study.</p> <p>(b) The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.</p> <p>(c) A Company undertaking impact assessment may book the expenditure towards CSR for that financial year, which shall not exceed 5% 2% of the total CSR expenditure for that financial year or ₹ 50 lakh, whichever is less higher.</p>
MCA Clarifications with respect to CSR	<ul style="list-style-type: none"> • Spending of CSR funds for COVID- 19 is an eligible CSR activity. • Spending of CSR funds for 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants', 'manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19 or similar such activities are eligible CSR activities. • Companies including Government companies may undertake the activities or projects or programmes using CSR funds, directly by themselves or in collaboration as shared responsibility with other companies, subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the guidelines issued by MCA. • Spending of CSR funds of COVID- 19 vaccination for persons other than the employees and their families, is an eligible CSR activity. • Spending of CSR funds for 'Har Ghar Tiranga' campaign such as mass scale production and supply of the National Flag, outreach and amplification efforts and other related activities, are eligible CSR activities.

9.12 - Copy of Financial Statement to be filed with Registrar (Sec. 137)

Requirement of Filing Financial Statement with Registrar - Sec. 137(1)	Financial Statements adopted in AGM	A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the AGM of the company, shall be filed with the Registrar within 30 days of the date of AGM in such manner, with such fees as may be prescribed.
	Financial Statements not adopted in AGM	Where the financial statements are not adopted at AGM, such un-adopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of AGM and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned AGM for that purpose.
	Financial	The financial statements adopted in the adjourned AGM shall be filed with the

Statements adopted in adjourned AGM	Registrar within 30 days of the date of such adjourned AGM with prescribed fees.
Financial Statements of OPC	One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the closure of the financial year.

Rule 12 of Companies (Accounts) Rules, 2014 - Filing of Financial Statements and Fees to be Paid Thereon

- Every company shall file the financial statements with Registrar together with Form AOC-4 and the consolidated financial statements, if any, with Form AOC-4 CFS.
- Every NBFC that is required to comply with Indian Accounting Standards (Ind AS) shall file the financial statements with Registrar together with Form AOC-4 NBFC (Ind AS) and the consolidated financial statement, if any, with Form AOC-4 CFS NBFC (Ind AS).
- **Every company covered u/s 135(1) shall furnish a report on CSR in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be:
Provided that for the preceding financial year (2020-2021), Form CSR-2 shall be filed separately on or before 30th June, 2022, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be:
Provided further that for the financial year 2021-2022, Form CSR-2 shall be filed separately on or before 31st March, 2023 after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.**
- The class of companies as may be notified by the C.G. from time to time, shall mandatorily file their financial statement in Extensible Business Reporting Language (XBRL) format and the Central Government may specify the manner of such filing under such notification for such class of companies.
Explanation: The term "Extensible Business Reporting Language" means a standardised language for communication in electronic form to express, report or file financial information by companies under this rule.



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